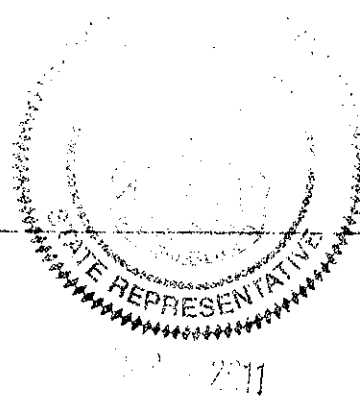


Michael F Wilmers, Chairman
Portage Township Planning Commission
19390 W Calverley St
Houghton, MI 49931



June 17, 2011

Representative Matt Huuki and Senator Tom Casperson

Valley View Quarry, Portage Township, Houghton County

Representative Huuki and Senator Casperson:

Introduction:

My name is Mike Wilmers and I am currently the chairman of the Portage Township Planning Commission. I have been a member of the Planning Commission since 2006. The purpose of this letter is to remove any doubt that the Valley View Quarry was considered a legal operation before it was shut down following the Kyser v Kasson Township decision.

I will outline in detail with supporting documentation, the steps and dates when actions were taken by the township board and the planning commission relative to regulating Valley View Quarry, but first I want to point out the confusion between the rhetoric and the truth at the outset.

David Bertram of the MTA said in the joint Senate and House Committee on Natural Resources that the Valley View Quarry was operating illegally without a permit prior to the Kyser decision. This is a false statement made by an ill informed person, who was likely informed by others who also do not understand the true facts behind the VVQ history.

In summary:

- The quarry began being developed in 2004 -2006. The township was aware of this and it was being done with the permission of the township.
- Late 2006 a resident made a complaint about noise and it was investigated.
- 2007 the township investigated the permitting required for quarrying related to DEQ, drain commissioner, mine inspector. All was in place.
- June 2009 a temporary asphalt plant permit is requested and the planning commission oversees this process.
- June 2009 the township attorney updates the board and said zoning cannot prohibit but can regulate quarry operations.
- Township then investigated the rules, and was told by the MTA and the MSU extension office that yes you can regulate but not prohibit gravel operations.

- This exposed the township to an understanding that its zoning ordinance has no section to deal with regulations to place on the removal of aggregates.
- Beginning in June of 2009 the township established a quarry committee to work in cooperation with Valley View Quarry in order to establish reasonable guidelines that all quarry operators would have to follow in the township. Nothing exists, so we started from scratch. This took dozens of committee meetings over many a couple months.
- We drafted regulations in August and presented them in September of 2009.
- Planning commission then met 3 times over 4 months to learn more about how to best regulate aggregate operations. These were all public meetings.
- We approved language and a process that would have to be followed because none yet existed in our zoning ordinance so we approved an amendment allowing for this and submitted it to the County Planning Commission for review and it was approved.
- Finally we sent it to the township board for final approval in May of 2010 and it was tabled and to this day not voted upon because of the then pending Kyser v Kasson Township case.

The bottom line is no one on the board or planning commission thought we could prohibit the quarry from operating and therefore no permit was needed because it was a LEGAL operation. Only now, after Kyser has this "illegal" label been made. It is disingenuous and not fair to say what was a legal operation was illegal because of something that happen last summer. History cannot be re-written that easily and I hope that if you have any further questions you review the rest of my letter which contains much more detail and supporting documentation.

Also please vote yes for HB 4746 and put an end to this non-sense before any other business gets shut down over this and hurts more communities as it has hurt ours.

Sincerely,



Michael F Wilmers.
Chairman, Portage Township Planning Commission

VVQ Background

December 2006 -- the township board heard a complaint from a landowner who lives about half a mile from the quarry. This landowner eventually sued VVQ to cease operations post Kyser. He complained of noise and truck traffic. The township board then investigated the complaint and met with the operators of the quarry. Various nuisance issues were raised as concerns and the operator provided assurance that they would be dealt with effectively when operations resumed the following season.

In 2007 the Township confirmed that the appropriate permits were in place from the County Drain Inspector and Mine Inspector, as well as any DEQ permits that were required. The quarry operated without incident or concern to the Township board again until 2009.

June 2009 over concerns for the location of a temporary traveling asphalt plant, the Township Board recommends that the Planning Commission oversees the Zoning Ordinance and if any changes are recommended by the commission that they go to the County Planning Commission, then to the Township Board for final approval.

June 26, 2009 the Township Attorney updates the Township Board that zoning can regulate but not prohibit the extraction of natural resources. (see minutes June 26, 2009.)

And this is where it all begins. The understanding of everyone including the township board, the township attorney, and the planning commission as well as the MTA and the MSU Extension office experts on land use is consistent --- Local Zoning *cannot* prohibit but may regulate extraction of natural resources. (see email from Supervisor and MTA and Land Use Series page 7 January 8, 2007 edition, and page 8 of April 3, 2009 edition)

While we always knew we could not prohibit sand, gravel, or mining operations with local zoning we did not know up until now that we could regulate them. So that was our goal -- to set up uniform regulations and a procedure to ensure that anyone who operates an gravel operation in our Township would have to get our approval once they demonstrate how they will comply with our regulations. It just so happened that working with VVQ we had a great partner who was willing to work with us to develop fair, safe, and reasonable regulations that balance the needs of the operator with the health and safety of our community.

With the goal in mind a "Quarry Committee" was established in July of 2009. A series of meetings are held between the committee and VVQ and regulations are designed to deal with things that may occur in the future which now, under the regulations could be dealt with as a "nuisance" under our zoning ordinance. (see final draft Aug 24, 2009, and minutes September 14, 2009.)

October 2009. Township Board finalizes regulations, and recommends to Planning Commission that a Special Use Permit be added to the RUR zoning district to allow for extraction of aggregates. (see minutes, October 12, 2009)

The whole intent behind the Special Use Permit and amendment to the zoning ordinance was to allow the township to regulate the operation. Without this mechanism in place our zoning ordinance was inadequate to regulate an operation that we could not prohibit. At no time was it ever assumed by anyone on the township board or the planning commission that the Quarry was somehow operating illegally. The quarry did not need to cooperate with the process or the regulations, but they did for the good of the township and for any future operators who may wish to set up operations in the township.

Planning Commission Activities:

December 3, 2009. From the recommendation of the township board to the planning commission, we heard from residents and township board members about legal issues related to regulation of the quarry. We tabled the issue until we could secure more information. (see minutes December 3, 2009)

January 21, 2010. Bruce Peterson of the USDA presents to the commission information demonstrating that rock formations only exist in areas zoned RUR and not FF where gravel extraction is allowed by zoning ordinance. We then decide that we will have another meeting to discuss the language of the proposed ordinance and regulations that would allow us to regulate these operations. Also heard that Kyser case could decide this issue without the need for regulations to be put into place. (see minutes January 21, 2010)

February 3, 2010. Township attorney addressed the commission and states that zoning cannot prohibit but can regulate unless the case before the Supreme Court is decided favorably to townships. With this knowledge the Commission recommends that a Special Use Permit Process be put in place so that we can regulate the quarry. This permit process requires a change in the zoning ordinance and the planning commission wrote the conditions of the permits for the amendment. (see minutes February 3, 2010)

April 6, 2010. Planning commission passes the language to amend the zoning ordinance to allow for the removal of aggregate as a special use, outlining the

special use process and the types of regulations that will be applied to the operation. (see minutes April 6, 2010)

Township Board Actions:

May 10, 2010. Houghton County Planning Commission accepts changes to Portage Zoning Ordinance. **Township Board meets and *tables* the Planning Commission recommendation of adding a the requested zoning amendment language and Special Use permit process. This is tabled because Kyser is pending and should be decided soon. (see minutes May 10, 2010)**

July 15th, 2010 Kyser is decided.

August 9, 2010. Quarry committee met with attorney to discuss Kyser and its implications. Date set for Special Public Hearing. (see minutes August 9, 2010)

August 24, 2010. Special meeting held, board votes commence proceedings to correct the post-Kyser now "violating use." Board orders quarry to stop all operations within 10 days. (see minutes August 24 ,2010)

September 23, 2010. Board files suit against VVQ.

Conclusion:

Over the course of the next 8 months the quarry operators, residents, and planning commission members appeal to the board to at least vote on the amendments that were proposed in April of 2010. The same answer comes back that "we did not spend this much money suing you just to allow you to open back up."

This is wrong. Everything is wrong about it. There is no way in my opinion or that of anyone being intellectually honest that the quarry was ever operating "illegally." The claim that they were is dishonest. As is the claim that "all they had to do was get a permit." Like I explained above, without VVQ working with the township board, the quarry committee, and the planning commission as cooperatively as they were, we would have never established the regulations we did (but never enacted.) They were being what I would call good corporate citizens who worked well with the township to find the right balance between the needs of the business and the needs of the township and its residents.

They were never operating illegally and anyone who says that is misinformed or just being dishonest.

Please pass HB 4746 so VVQ is the first and last business that has to go through this kind of harassment. For the good of our community as a whole this is a very important bill.

Thank you for your time.

Sincerely

A handwritten signature in cursive script, appearing to read "Michael F. Wilmers".

Michael F. Wilmers

Chairman, Portage Township Planning Commission.